

## **ATTACHMENT C**



**DEPARTMENT OF  
FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

December 18, 2012

Ms. Francesca Schuyler, Director of Finance  
City of Montebello  
1600 West Beverly Boulevard  
Montebello, CA 90640-3932

Dear Ms. Schuyler:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 20, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Montebello Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on September 5, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 20, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on November 13, 2012.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific item being disputed.

- Item No. 14 – Reimbursement Agreement with the City in the amount of \$3.1 million. Finance denied the item as HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable. The Agency contends the item is an enforceable obligation because it is a written agreement issued to secure an "indebtedness obligation," as such term is defined at HSC Section 34171 (e). Under the 1990 Reimbursement Agreements, and all subsequent versions thereof, the City's lease payment obligations – and thus the stream of revenue flowing to the Certificates of Participation (COPs) – were paid from a portion of the Agency's tax increment revenues stemming from the Project Areas. HSC section 34171 (d) (2) states that written agreements entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations. Although the Reimbursement Agreement is solely for the purpose of securing or repaying indebtedness obligations, it was not entered into at the time of issuance of the indebtedness obligations. The Reimbursement Agreement was approved on September 5, 2000; the Official Statement and Purchase Agreement were dated October 12, 2000. Finance has not issued a Finding of Completion to the Agency; therefore, the provisions of HSC section 34171 apply. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, the item is currently not an enforceable obligation.

- Item No. 15 – Low Mod Housing Deferral Repayment in the amount of \$6.5 million. HSC section 34176 (e) (6) (B) states that loan or deferral owed to the Low and Moderate Income Housing Fund shall not be made prior to the 2013-14 fiscal year. Therefore, this line item is not enforceable obligation and will not be eligible for RPTTF funding at this time.
- Item No. 19 and 24 totaling \$45,000 are considered administrative expenses and should be counted toward the cap. Finance no longer reclassifies the items as administrative costs. The Agency contends the items are enforceable obligations because they are associated with litigation costs incurred in the case entitled Sevacherian, et al, v. Community Redevelopment Agency of the City of Montebello (Los Angeles County Superior Court Case No. BC437787), and maintenance costs for properties owned by the Agency. Finance agrees the following categories are specifically excluded from the administrative cap as defined by HSC section 34171 (b):
  - o Any litigation expenses related to assets or obligations.
  - o Settlements and judgments.
  - o The costs of maintaining assets prior to disposition.
  - o Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs.

Therefore, Item 19 is litigation expenses related to assets or obligations and Item 24 is the cost of maintaining assets prior to disposition and are therefore enforceable obligations.

In addition, per Finance's ROPS letter dated October 20, 2012, the following items not disputed by the Agency continue to be denied:

- Claimed administrative costs exceed the allowance by \$259,564. HSC section 34171 (b) limits the fiscal year 2012-13 administrative expenses to three percent of property tax allocated to the Agency or \$250,000, whichever is greater. As a result, the Agency is eligible for \$250,000 for administrative expenses. The Los Angeles Auditor-Controller's Office distributed \$250,000 of administrative costs for the July through December 2012 period, thus no administrative cost is available for distribution on the January through June 2013 period. Therefore, \$259,564 of excess administrative cost is not allowed.

The Agency's maximum approved RPTTF distribution for the reporting period is: \$3,718,072 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of January through June 2013</b>	
Total RPTTF funding requested for obligations	\$ 5,586,765
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Item 14	1,718,693
Item 15	150,000
Total approved RPTTF for enforceable obligations	\$ 3,718,072
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	0
<b>Total RPTTF approved:</b>	<b>\$ 3,718,072</b>

<b>Administrative Cost Calculation</b>	
Total RPTTF for the period July through December 2012	\$ 3,319,323
Total RPTTF for the period January through June 2013	3,718,072
<b>Total RPTTF for fiscal year 2012-13:</b>	<b>\$ 7,037,395</b>
Allowable administrative cost for fiscal year 2012-13 (Greater of 3% or \$250,000)	250,000
Administrative allowance for the period of July through December 2012	250,000
<b>Allowable RPTTF distribution for administrative cost for ROPS III:</b>	<b>\$0</b>

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not questioned on this ROPS or a preceding ROPS.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

  
STEVE SZALAY  
Local Government Consultant

cc: On following page

Ms. Schuyler  
December 18, 2012  
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cc: Mr. Michael Huntley, Director of Planning, City of Montebello  
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller  
California State Controller's Office

## **ATTACHMENT D**

**RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III)**  
January 1, 2013 through June 30, 2013

[illegible]

1 Approval Date: \_\_\_\_\_

Funding Source					
Reserve Balance	Admin Allowance	RPTIF	Other	Six-Month Total	
\$	\$	\$	\$	\$	\$
		486,155			486,155
		653,000			653,000
		325,069			325,069
		87,516			87,516
		262,500			262,500
		289,786			289,786
		399,684			399,684
		143,608			143,608
		64,743			64,743
		154,645			154,645
					91,858
					130,888
					95,619
		1,718,693			1,718,693
		150,000			150,000
		168,890			168,890
		432,476			432,476
	9,564				9,564
	-	25,000			25,000
		200,000			200,000
	250,000				250,000
		5,000			5,000
					20,000
		20,000			20,000
					-
					-
					-

## **ATTACHMENT E**

**Montebello**  
**Los Angeles County**

Pursuant to Health and Safety Code section 34186 (a)  
PRIOR PERIOD ESTIMATED OBLIGATIONS vs. ACTUAL PAYMENTS  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS II)  
July 1, 2012 through December 31, 2012

Note: The County Auditor-Controller (CAC) will need to copy the following information from the Prop Period Payments tab that was completed by the Successor Agency (SA).												RPTTF Information to be Completed by the County Auditor-Controller (CAC) Note that the actual payments for Admin and other non-admin enforceable obligations should equal the amounts provided to Finance by the CAC on the ROPS II Reporting Form			
Item #	Project Name / Debt Obligation	Payee	Description / Project Scope	Project Area		RPTTF Admin Allowance		Non-Admin Enforceable Obligations		CAC Reported RPTTF Admin Allowance		CAC Reported RPTTF Non-Admin Enforceable Obligations			
				Authorized	Actual	Authorized	Actual	Authorized	Actual	Authorized	Actual				
1.	Hillside 1997 Refunding Bonds	Grand Total Bank of New York	Land and Infrastructure	Montebello Hills	\$ 249,840	\$ 77,786	\$ 5,193,003	\$ 249,840	\$ 205,841	\$ 3,319,323	\$ 2,308,168	CAC Comments			
			Improvements	Montebello Hills			91,455			91,655	91,655				
2.	1998 Series A Hillside Refunding Bonds	Bank of New York	Land and Infrastructure	Montebello Hills			121,000			121,000	121,000				
3.	Tax Allocation Parity Refunding Bonds 1998 Series B (Hillside)	Bank of New York	Improvements	Montebello Hills			73,069			73,069	73,069				
4.	Tax Allocation Parity Refunding Bonds 1999 Series A (Hillside)	Bank of New York	Land and Infrastructure	Montebello Hills			25,516			25,516	25,516				
5.	Tax Allocation Parity Refunding Bonds 2007 Series A (Hillside)	Bank of New York	Improvements	Montebello Hills			52,500			52,500	52,500				
6.	Tax Allocation Parity Bonds 2007 Series B (Hillside)	Bank of New York	Land and Infrastructure	Montebello Hills			92,766			92,766	92,766				
7.	Tax Allocation Bonds 2009 Series A (Hillside)	Bank of New York	Improvements	Montebello Hills			397,684			397,684	397,684				
8.	Tax Allocation Parity Refunding Bonds 50 and 1999 Series A	Bank of New York	Infrastructure Improvements	South Industrial			537,003			537,003	537,003				
9.	Tax Allocation Parity Refunding Bonds 50 and 1999 Series B	Bank of New York	Infrastructure Improvements	South Industrial			247,250			247,250	247,250				
10.	Tax Allocation Parity Refunding Bonds 50 and 2007 Series A	Bank of New York	Infrastructure Improvements	South Industrial			335,257			335,257	335,257				
11.	1997 Housing Series B (MERP Housing)	Bank of New York	Low/Mid Senior Housing	MERP			395,407			395,407	395,407				
12.	2002 Housing Tax Allocation Parity Bonds (MERP Housing)	Bank of New York	Low/Mid Senior Housing	MERP			410,896			410,896	410,896				
13.	2007 Housing Series A	Bank of New York	Low/Mid Senior Housing	MERP			128,889			128,889	128,889				
14.	Reimbursement Agreement Between City & Successor Agency pursuant to 2000 Certificates of Participation	City of Montebello City of Montebello Successor Housing Agency	Long Term Lease Agreement per Reimbursement Agreements of \$33,333.60 of California Health and Safety Code	Montebello Hills & South Industrial			803,216			803,216	803,216	Doi Disallowed but SA Paid X, but DOF Approved 3,319,323 and county Paid 3,319,323 so the 1,007,776 and the remaining item are paying using other Funds.			
15.	Low Mid Housing Deferral	Severcherian	Purchase of Former Ostrom Chevrolet Property	Montebello Hills			833,596	1,007,776			1,007,776				
16.	Ostrom Chevrolet Note Payable	Severcherian	Debt Obligation per Agreement #	MERP			169,890					Amount not listed in estimate, only in total due during year. Doi did not say approve or disapprove			
17.	Town Center Payments - Shops at Montebello	Aetna Life Insurance	1938 Obligation of Employer	Montebello Hills			452,478					Amount not listed in estimate, only in total due during year. Doi did not say approve or disapprove			
18.	Pension Obligations	City of Montebello	Contributions	Agency			9,295			9,295		Doi Classified it as Admin. Yet the SA Paid it using RPTTF			
19.	Overseight Board Attorney - Ligation	Stratling, Yocca, Carlson, & Rauth	Successor Agency Attorney	Agency			169,018			50,000		Doi Classified it as Admin. Yet the SA Paid it using RPTTF			
20.	Attorneys Fees - Ligation	Various	Attorney's Fees Directly Charged to Severcherian Ligation	MERP			169,018			78,061		Doi Classified it as Admin. Yet the SA Paid it using RPTTF			
21.	Administrative Transaction fee	Various	Admin Overhead and other G&A	Agency			77,780			240,375					
22.	Arbitrage Calculation Costs on Bonds	Arbitrage Compliance Specialists	Arbitration of Federal & State Arbitration Compensations	Agency								Doi Classified it as Admin. Yet the SA Paid it using RPTTF			
23.	Agreed Upon Procedures - Housing	Auditor to be determined	Successor Agency Housing review	Low/Mid			4,125			1,100		Item not listed in original ROPS			
24.	Project Maintenance Costs	Various	Costs associated with maintaining streets, sidewalks, etc.	Montebello Hills			10,531					Amount not listed in estimate, only in total due during year. Doi did not say approve or disapprove			
25.	Due Diligence and audit of fy 0, 30.	6.30.12	DOR and other professional accounting services	Agency			30,000					Doi Classified it as Admin			
26.	26.00 fiscal agent fees	BNY Western Trust	BNY Western Trust	Agency			18,000								
27.	27.00 Ligation Settlement	Severcherian	Severcherian	MERP						17,992	14,631				

## **ATTACHMENT F**

**NEW ISSUE – BOOK-ENTRY ONLY****RATING**

Standard &amp; Poor's: A-/A2

(See "CONCLUDING INFORMATION -- Rating on the Bonds" herein)

*In the opinion of Fulbright & Jaworski L.L.P., Los Angeles, California, Bond Counsel, under existing law, interest on the Bonds is exempt from personal income taxes of the State of California and, assuming compliance with the tax covenants described herein, interest on the Bonds is excluded, pursuant to section 103(a) of the Internal Revenue Code of 1986 (the "Code"), from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. See, however, "LEGAL MATTERS—Tax Exemption" herein regarding certain other tax considerations.*

**LOS ANGELES COUNTY****STATE OF CALIFORNIA****\$17,060,000****MONTEBELLO PUBLIC FINANCING AUTHORITY  
VARIABLE RATE LEASE REVENUE REFUNDING BONDS, 2004 SERIES A  
(MONTEBELLO HOTEL PROJECT)****Dated: Date of Delivery****Due: December 1, 2034**

This cover page contains certain information for quick reference only. It is not a summary of the issue. Potential investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision. See "BONDHOLDERS' RISKS" herein for a discussion of special risk factors that should be considered in evaluating the investment quality of the Bonds.

Interest due with respect to the Bonds is payable November 1, 2004 and the first Business Day of each month thereafter, so long as the Bonds bear interest at a variable interest rate determined weekly (the "Variable Rate"), and, after the Fixed Rate Conversion Date (as defined herein), at a fixed interest rate (the "Fixed Rate") determined in accordance with the Indenture, as defined herein (see "THE BONDS – General Provisions" herein). Each Variable Rate shall be determined by Gates Capital Corporation, as variable rate remarketing agent (the "Remarketing Agent"), having due regard for prevailing financial market conditions, to be the rate (but not higher than the rate) which would be necessary in order to enable the Remarketing Agent to remarket tendered Bonds at a price equal to 100% of the principal amount thereof on the date such Variable Rate is determined.

The Authority has previously issued its Revenue Bonds, Series 2001A (Montebello Hotel Project) (the "Prior Bonds") in the aggregate principal amount of \$15,830,000, the proceeds of which were provided to the City of Montebello (the "City") to finance the acquisition, construction and equipping of a hotel project known as Hilton Garden Inn Montebello (the "Project") located adjacent to the Montebello Country Club and The Quiet Cannon restaurant and banquet facility (the "Quiet Cannon"). The proceeds of the Bonds will be used to refund the Prior Bonds, to finance certain improvements to the Project and the Quiet Cannon, to fund a reserve fund for the Bonds, and to pay costs of issuance of the Bonds.

The Bonds are being issued pursuant to an Indenture, dated as of September 1, 2004 (the "Indenture"), by and between the Montebello Public Financing Authority (the "Authority") and BNY Western Trust Company, as trustee (the "Trustee"). The Bonds are payable from Revenues consisting of payments of (i) Base Rental (defined herein) to be made by the City of Montebello (the "City") to the Authority as rental for the Project (the "Leased Property") pursuant to an Amended and Restated Lease Agreement, dated as of September 1, 2004 (the "Lease"), (ii) Agency Advances (as described herein), (iii) all amounts held in the funds and accounts created under the Indenture, and (iv) all other receipts of the Trustee (as assignee of the Authority) attributable to the ownership, leasing or operation of the Project. The City is required under the Lease to make payments in each fiscal year in consideration of the use and possession of the Leased Property from Project Net Revenues (defined herein) and, to the extent Project Net Revenues and Agency Advances are not sufficient, from legally available funds of the City, in an amount sufficient to pay the annual principal and interest due on the Bonds then outstanding, subject to abatement, as described herein (see "SOURCES OF PAYMENT FOR THE BONDS" and "BONDHOLDERS' RISKS" herein).

Payments of principal of (but not any premium) and interest on the Bonds when due will be made initially from draws made by the Trustee on an irrevocable direct-pay letter of credit (the "Credit Facility" or "Letter of Credit") issued to the Trustee. The Credit Facility will also be drawn on, if other funds are not available, to purchase Bonds tendered by Owners at the Purchase Price. The Credit Facility will be issued by Union Bank of California, N.A. The Credit Facility will expire on September 22, 2009 and, unless extended or unless an alternate letter of credit or other security meeting the requirements of the Indenture is provided in replacement therefor, the Bonds will be subject to mandatory tender for purchase as described herein (see "THE BONDS – Tender and Purchase of Bonds – Mandatory Tender of Bonds" herein).

This Official Statement is intended to describe the Bonds only for the period during which they bear interest at a Variable Rate, it is not intended to describe Bonds during the period when they bear interest at the Fixed Rate.

*The Bonds are offered, when, as and if issued and accepted by the Underwriter, subject to the approval as to their legality by Fulbright & Jaworski L.L.P., Los Angeles, California, Bond Counsel. Certain legal matters will be passed on for the Authority and the City by Alvarez-Glasman & Colvin, West Covina, California, City Attorney and by Fulbright & Jaworski L.L.P., Los Angeles, California, as Disclosure Counsel. It is anticipated that the Bonds, in book-entry form, will be available for delivery on or about September 23, 2004 through the facilities of The Depository Trust Company.*

**WULFF, HANSEN & CO.**  
**Established 1931**  
**Investment Bankers**

*The date of the Official Statement is September 16, 2004.*

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Hilton Garden Inn Montebello (the "Project") located adjacent to the Montebello Country Club and The Quiet Cannon. See "THE PROJECT" herein.

#### **Purpose**

The Bonds are being delivered to refund the Prior Bonds, finance certain improvements to the Project (the "2004 Hotel Project") and the Quiet Cannon (the "Quiet Cannon Project"), fund a reserve fund for the Bonds and to pay the costs of issuance of the Bonds. See "THE FINANCING PLAN" herein.

#### **Security and Sources of Repayment**

The Bonds are being issued pursuant to an Indenture, dated as of September 1, 2004 (the "Indenture"), by and between the Authority and BNY Western Trust Company, as trustee (the "Trustee"). See "APPENDIX A – SUMMARY OF THE LEGAL DOCUMENTS – THE INDENTURE."

**Revenues.** The Bonds are payable from "Revenues," consisting of (i) all payments to the Trustee (as assignee of the Authority) pursuant to the Lease; (ii) the Agency Advances payable by the Agency pursuant to the Amended and Restated Montebello Hotel Project Agreement (the "Project Agreement"), dated as of September 1, 2004, by and between the Agency and the City, amending and restating the Montebello Project Agreement, dated as of November 1, 2001; (iii) all amounts held in the funds and accounts created under the Indenture, together with earnings thereon; and (iv) all other receipts of the Trustee (as assignee of the Authority) attributable to the ownership, leasing or operation of the Project. See "SOURCES OF PAYMENT FOR THE BONDS" herein.

**Letter of Credit.** Payments of principal, redemption amount (but not any premium) and interest on the Bonds will initially be paid from drawings under an irrevocable direct-pay letter of credit (the "Credit Facility") issued by Union Bank of California, N.A. (the "Credit Entity"). Drawings under the Credit Facility will be used to pay the principal of and interest on the Bonds when due. The Credit Facility will also be drawn on if remarketing proceeds or other funds are not available to purchase Bonds tendered by Owners at the Purchase Price (as defined herein) or on any optional or mandatory tender date. See "SOURCES OF PAYMENT FOR THE BONDS – The Letter of Credit" herein.

**Reserve Fund.** To the extent required as described herein, the Reserve Fund is to be used to reimburse the Credit Entity for draws on the Credit Facility or to pay principal and interest on the Bonds when due. See "SOURCES OF PAYMENT FOR THE BONDS – Reserve Fund" herein.

#### **Legal Matters**

All legal proceedings in connection with the issuance of the Bonds are subject to the approving opinion of Fulbright & Jaworski L.L.P., Los Angeles, California, Bond Counsel. Such opinion, and certain tax consequences incident to the ownership of the Bonds, including certain exceptions to the tax treatment of interest, are described more fully under the heading "LEGAL MATTERS" herein. Certain legal matters will be passed on for the City and the Authority by Alvarez-Glasman & Colvin, West Covina, California, as City Attorney and by Fulbright & Jaworski L.L.P., Los Angeles, California, as Disclosure Counsel.

#### **Professional Services**

BNY Western Trust Company, will serve as trustee under the Indenture. The Trustee will act on behalf of the Bondholders for the purpose of receiving all moneys required to be paid to the Trustee, to

## **Plan of Refunding**

The Authority issued the Prior Bonds pursuant to an Indenture of Trust, dated as of November 1, 2001 (the "Prior Bonds Indenture") between the Authority and BNY Western Trust Company, as trustee thereunder (the "Prior Bonds Trustee").

On the Closing Date, a portion of the net proceeds of the Bonds, along with certain moneys released from the Prior Bonds Indenture, will be deposited with BNY Western Trust Company, as escrow agent (the "Escrow Agent") pursuant to an Escrow Agreement, dated as of September 1, 2004 (the "Escrow Agreement"), by and between the Authority and the Escrow Agent. The deposit will be invested in non-callable Government Obligations (as defined in the Prior Bonds Indenture) in an amount which, together with investment earnings thereon, will be sufficient to pay principal of and interest on the Prior Bonds maturing on November 1, 2004 and to redeem all remaining Prior Bonds on November 1, 2004.

In connection with the refunding and defeasance of the Prior Bonds, Grant Thornton LLP, Minneapolis, Minnesota (the "Verification Agent") will examine the arithmetical accuracy of computations provided by the Financial Advisor on behalf of the Authority relating to (a) computation of forecasted receipts of principal and interest on the Government Obligations and the forecasted payments of principal and interest to redeem the Prior Bonds, and (b) computation of the yield on the Government Obligations. Such computations were based solely upon assumptions and information supplied by the Financial Advisor on behalf of the Authority. The Verification Agent has restricted its procedures to examining the arithmetical accuracy of certain computations and has not made any study or evaluation of the assumptions and information upon which the computations are based and, accordingly, will not express an opinion on the data used, the reasonableness of the assumptions, or the achievability of the forecasted outcome.

## **SOURCES OF PAYMENT FOR THE BONDS**

### **General**

The Bonds are limited obligations of the Authority, issued under and secured by the Indenture, payable solely from (i) all payments to the Trustee (as assignee of the Authority) pursuant to the Lease; (ii) the Agency Advances; (iii) all amounts held in the funds and accounts created under the Indenture, together with earnings thereon; and (iv) all other receipts of the Trustee (as assignee of the Authority) attributable to the ownership, leasing or operation of the Project (collectively, the "Revenues"). The Revenues shall consist primarily of revenues derived from the operation of the Project.

### **Site and Facilities Lease**

In consideration for the issuance of the Prior Bonds by the Authority, the City leased the Project and the underlying land (the "Leased Property") to the Authority pursuant to a Site and Facilities Lease (the "2001 Site Lease") dated as of November 1, 2001. In connection with the issuance of the Bonds, the Authority and the City are entering into an Amended and Restated Site and Facilities Lease (the "Site Lease"), amending and restating the 2001 Site Lease.

### **Lease Agreement**

The Authority, concurrently with the execution of the 2001 Site Lease, leased the Leased Property back to the City pursuant to a Lease Agreement (the "2001 Lease"), dated as of November 1, 2001. In connection with the issuance of the Bonds, the Authority and the City will enter into an Amended and Restated Lease (the "Lease"), amending and restating the 2001 Lease, pursuant to which

the City will make Base Rental payments sufficient in timing and amount to pay the principal and interest coming due on the Bonds.

The City is obligated under the Lease to make Base Rental payments from Project Net Revenues, and from any funds of the City legally available therefor. "Project Net Revenues" consist of, with respect to any period, the amount of Project Gross Revenues received during such period less the amount of Project Operating Expenses becoming payable during such period. "Project Gross Revenues" consist of all revenues, income, receipts and money received by the City or by the Facilities Manager in connection with, or related to, the ownership and operation of the Project, and "Project Operating Expenses" are, for any specified period, the sum of expenses of the Project as shown on its "Statement of Revenues and Expenses" (or equivalent financial statement) as its operating expenses (or equivalent items of expense) including extraordinary and nonrecurring items but excluding interest expense and depreciation and amortization, all as determined in accordance with generally accepted accounting principles.

***Pledge of Project Gross Revenues.*** Pursuant to the Lease, the City has irrevocably pledged all Project Gross Revenues to the payment of the Base Rental payments and Additional Rental payments as provided therein. This pledge, together with the pledge created by all other leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the City payable from and secured by a pledge of and lien upon any of the Project Gross Revenues on a parity with the Base Rental payments and the Additional Rental payments, entered into or issued pursuant to and in accordance with the Lease ("Parity Obligations"), and subject to Permitted Encumbrances (as defined in the Indenture), shall constitute a first and exclusive lien on Project Gross Revenues and other funds and accounts created under the Lease for the payment of the Base Rental payments and all other Parity Obligations in accordance with the terms thereof and the Indenture.

In order to carry out and effectuate the pledge and lien of Project Gross Revenues contained in the Lease, the City shall cause all Project Gross Revenues to be deposited on the day of their receipt in an account of the Facilities Manager designated as the "Operating Account." So long as no Event of Default has occurred and is continuing under the Lease or under the Hotel Management Agreement, the Operating Account is to be subject to the direction of the Facilities Manager on behalf of the City pursuant to the Hotel Management Agreement. Amounts held in the Operating Account shall be used to pay Project Operating Expenses as they arise. Not less often than weekly, all amounts remaining in the Operating Account in excess of \$100,000, after payment of Project Operating Expenses, shall be transferred to Trustee for deposit into the Revenue Fund established under the Indenture.

In any case in which an Event of Default has occurred and is continuing under the Lease or under the Hotel Management Agreement, all amounts in the Operating Account shall be transferred on the day of their receipt to the Trustee for deposit into the Revenue Fund.

***Covenant to Budget and Appropriate.*** The City also covenants in the Lease to take such action as may be necessary to include all Base Rental payments and Additional Rental payments in its annual budget and to make annual appropriations for all such Base Rental. The Lease provides that the several actions required by such covenants are deemed to be and shall be construed to be ministerial duties imposed by law and that it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such official to enable the City to carry out and perform the covenants in the Lease agreed to be carried out and performed by the City.

Except to the extent described below under "SOURCES OF PAYMENT FOR THE BONDS – City Obligation to Contribute Special Tax Revenues," the City is not required to make Base Rental payments from its general fund unless Project Net Revenues, together with Agency

**Advances, are insufficient to pay principal of and interest on the Bonds as such payments become due and payable.**

The Lease provides that Base Rental for any portion of the Leased Property will be abated during any period in which there is substantial interference with the City's use of such portions of the Leased Property because of damage, destruction or condemnation of such portions. The amount of such abatement shall be an amount agreed upon by the City and the Authority such that the resulting Base Rental represents fair consideration for the use and occupancy of the portions of the Leased Property not taken, damaged or destroyed. Such abatement shall continue for the period commencing with such taking, damage or destruction and ending with the substantial completion of the work of replacement, repair or reconstruction. In the event of any such damage or destruction, the Lease shall continue in full force and effect and the City waives any right to terminate the Lease by virtue of such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Base Rental under the Lease to the extent that the proceeds of rental interruption insurance or amounts in the Lease Payment Account of the Debt Service Fund are available to pay Base Rental which would otherwise be abated under the Lease.

During any period of abatement of Base Rental, the Trustee may pay principal of and interest on the Bonds allocable to such portions of the Leased Property, if available, from proceeds of insurance or condemnation award. The City's reduced rental payments will constitute the total Base Rental. The reduced Base Rental may not be sufficient to pay principal and interest on the Bonds in the amounts and at the rates set forth therein. The failure to make such payment of principal and interest would not constitute a default by the City under the Indenture, the Lease or otherwise.

**The obligation of the City to pay Base Rental does not constitute an indebtedness of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. Neither the Bonds nor the obligation of the City to pay Base Rental constitutes an indebtedness of the City, the State of California, or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.**

#### **City Obligation to Contribute Special Tax Revenues**

Under a Memorandum of Understanding and Intent (the "MOU"), dated October 19, 1999, by and between the City and HALLC, the City is obligated to budget and appropriate from its general fund, and to contribute to the Project, an amount equal to the "Special Tax Revenues," defined as the revenues resulting from: (i) the levy and collection of the Transient Occupancy Tax (the "Transient Occupancy Tax") upon the activities of the Project, as such tax is so defined and levied by the City pursuant to Ordinance No. 1094 of the City, passed and approved by the City Council on October 13, 1964 (as the same may be amended from time to time), and (ii) the levy and collection of the Hotel Land Tariff (the "Hotel Land Tariff"), as such tariff is defined and levied by the City pursuant to Ordinance No. 2251 of the City, passed and approved by the City Council on September 25, 2002 (as the same may be amended from time to time). Thus, the statement of Project revenues and the projected Project revenues appearing in the Feasibility Study account for the Special Tax Revenues as components of Project Revenue. See "APPENDIX G - FEASIBILITY STUDY" herein. Likewise, the Special Tax Revenues are included as components of Project revenue in Table No. 1, Table No. 2 and Table No. 3 herein (see "THE PROJECT - Historical Operations of the Project" and "Projected Project Net Revenues and Debt Service Coverage"). Under the Lease, the City is obligated to budget and appropriate the full amount of the Base Rental payments for each year, but payment of such appropriation is offset by the amount of Project Net Revenues and Agency Advances available for such Base Rental payments. For periods in which Project Net Revenues are alone sufficient to cover Base Rental payments, the City under the MOU will still

remain obligated to contribute its general funds to the Project in an amount equal to the Special Tax Revenues.

### **Project Agreement**

**Unless significant growth in assessed valuations within the Redevelopment Project Areas of the Agency (the "Project Areas") occurs, the Agency does not expect to have available any Tax Revenues when needed to pay Agency Advances.**

**Agency Advances.** Pursuant to the Project Agreement, the Agency has agreed to pay to the City, solely from "Tax Revenues," (defined below) no later than 10 days prior to any Bond Payment Date, for deposit into the Revenue Fund, Agency Advances in an amount equal to the amount by which the amount on deposit in the Lease Payment Account on such date is less than the amount required to be deposited into the Lease Payment Account for payment of principal or and interest on the Bonds on such Bond Payment Date. "Tax Revenues" consist of the property taxes allocated to the Agency pursuant to Article 6 of Chapter 6 of the Redevelopment Law and Section 16 of Article XVI of the Constitution of the State, but excluding: (a) amounts required for payment of the Senior Agency Obligations; (b) amounts, if any, received by the Agency pursuant to Section 16111 of the Government Code, (c) payments under any agreements with, or required by the Redevelopment Law to made to, taxing agencies that would have received a portion of the Tax Revenues but for the Agency's having determined to do so; and (d) all amounts which are required under the Redevelopment Law to be deposited in the Low and Moderate Income Housing Fund of the Agency. To the extent Tax Revenues are not available to make such payments, each such deficiency shall remain due and payable under the Project Agreement, and shall be paid by the Agency as soon as practicable after Tax Revenues are available therefor, in an amount equal to the then present value of such deficiency, calculated from the date such deficiency was to have been paid, to the date of payment, based on a factor equal to the interest rate on the Bonds at time the deficiency was to have been paid, compounded annually.

**Pledge of Tax Revenues.** Pursuant to the Project Agreement, the Agency pledges and grants to the Trustee, on behalf of and for the benefit of the Bondholders, a security interest in and first lien on the Tax Revenues. However, the pledge of any revenues of the Agency thereunder is expressly subordinated to certain payments required by statute or prior agreement and to the pledge and lien thereon of heretofore or hereafter issued Senior Agency Obligations. See "THE AGENCY AND THE AGENCY ADVANCES – Outstanding Indebtedness of the Agency" herein. Furthermore, the Agency may issue additional Senior Agency Obligations to finance other economic development activities with the Project Areas.

**Additional Obligations.** While the Bonds are outstanding, the Project Agreement provides that the Agency may incur additional obligations with a lien and pledge on the Tax Revenues which is superior to that granted under the Project Agreement to the extent provided for in the Senior Agency Obligations. The Agency may not grant a lien and pledge on the Tax Revenues on a parity with that granted under the Project Agreement. The provisions of the Project Agreement do not limit the Agency's ability to issue or incur additional debt with a lien or charge upon the Tax Revenues which is subordinate to that granted thereunder.

### **Funds Established Under the Indenture**

**Operating Reserve Fund.** Pursuant to the Indenture, there is established a separate Operating Reserve Fund, which shall be held by the Trustee in trust for the benefit of the Authority and the Owners of the Bonds. Amounts initially deposited in the Operating Reserve Fund equal \$100,000, constituting the Operating Reserve Requirement. The amount on deposit in the Operating Reserve Fund shall be

## **ATTACHMENT G**

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AMENDED AND RESTATED MONTEBELLO HOTEL PROJECT AGREEMENT

Between the

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MONTEBELLO

And the

CITY OF MONTEBELLO

Dated as of September 1, 2004

Relating to

\$17,060,000  
Montebello Public Financing Authority  
Variable Rate Lease Revenue Refunding Bonds, 2004 Series A  
(Montebello Hotel Project)

(Amending and restating the Montebello Hotel Project Agreement  
dated as of November 1, 2001)

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THIS AMENDED AND RESTATED MONTEBELLO HOTEL PROJECT AGREEMENT is made and entered into as of September 1, 2004 (the "Agreement") by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MONTEBELLO, a redevelopment agency organized and existing under, and by virtue of the laws of the State of California (the "Agency"), and the CITY OF MONTEBELLO, a municipal corporation and general law city organized and existing under the constitution and laws of the State of California (the "City"), and amends and restates in its entirety that certain Montebello Hotel Project Agreement, dated as of November 1, 2001, between the Agency and the City.

**WITNESSETH:**

**WHEREAS**, the Montebello Public Financing Authority (the "Authority") has previously issued its \$15,830,000 Revenue Bonds, Series 2001A (Montebello Hotel Project) (the "Prior Bonds") for the purpose of assisting the City in financing the acquisition, construction and equipping of a hotel facility known as the Hilton Garden Inn Montebello (the "Project") located adjacent to the Montebello Country Club and the Quiet Cannon Banquet and Conference Center; and

**WHEREAS**, the Agency previously determined that the Project is of benefit to the Project Areas of the Agency in that the Project will allow the City and the Agency to optimize the investments made in connection with the Montebello Country Club and the Quiet Cannon facilities by increasing the long-term utilization of such facilities, the Project will create additional employment and provide additional amenities of benefit to the residents and businesses within the Project Areas, and accordingly, based on such evaluation of the benefits to be received by the Agency, the Agency has determined to continue providing the Agency Advances as fully set forth herein; and

**WHEREAS**, the Authority has determined to undertake the financing of certain improvements to the Project and the refinancing of the Project by causing the issuance of its Variable Rate Lease Revenue Refunding Bonds, 2004 Series A (Montebello Hotel Project) (the "Bonds"), all pursuant to an Indenture, dated as of September 1, 2004 (the "Indenture"), by and between the Authority and BNY Western Trust Company, as trustee (the "Trustee"); and

**WHEREAS**, the Authority and the City will enter into an Amended and Restated Site and Facilities Lease, dated as of September 1, 2004, amending and restating the Site and Facilities Lease, dated as of November 1, 2001, whereby the City agrees to lease the Project and the underlying land (the "Leased Property") to the Authority, and an Amended and Restated Lease Agreement, dated as of September 1, 2004, amending and restating the Lease Agreement, dated as of November 1, 2001, whereby the Authority agrees to lease the Leased Property back to the City in consideration for, among other things, the Base Rental payments equal to the principal and interest coming due on the Bonds; and

**WHEREAS**, the Agency is a redevelopment agency, a public body, corporate and politic duly created, established and authorized to transact business and exercise its powers, including the power to provide assistance in connection with its redevelopment activities, all under and pursuant to the Community Redevelopment Law (Part 1 of Division 24 of the Health and Safety Code of the State of California and the acts amendatory and supplemental thereto and referred to herein as the "Redevelopment Law");

**NOW THEREFORE**, the parties to this Amended and Restated Montebello Hotel Project Agreement agree as follows.

## **ARTICLE I. DEFINITIONS**

**Section 1.01. Definitions.** Unless the context otherwise requires, capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Indenture.

## **ARTICLE II. PROJECT PAYMENTS**

**Section 2.01. Term.** This Agreement shall remain in full force and effect so long as any amounts remain owing by the City under the Lease or hereunder.

**Section 2.02. Agency Advances.** The Agency hereby agrees to pay to the City, solely from Tax Revenues, no later than 10 days prior to any Bond Payment Date, for deposit into the Revenue Fund, Agency Advances in an amount equal to the amount by which the amount on deposit in the Lease Payment Account on such date is less than the amount required to be deposited into the Lease Payment Account for payment of principal of and interest on the Bonds on such Bond Payment Date. To the extent Tax Revenues are not available to make such payments, each such deficiency shall remain due and payable hereunder, and shall be paid by the Agency as soon as practicable after Tax Revenues are available therefor, in an amount equal to the then present value of such deficiency, calculated from the date such deficiency was to have been paid, to the date of payment, based on a factor equal to the interest rate on the Bonds at the time the deficiency was to have been paid, compounded annually.

**Section 2.03. Agency Obligations Absolute.** All payments required by the Agency hereunder shall be the absolute obligations of the Agency, not subject to deduction or offset of any kind, including, without limitation, offset of amounts owing to the Agency under Section 2.04 hereof and under the Indenture.

**Section 2.04. Reimbursement of Agency Advances.** Agency Advances made by the Agency under Section 2.02 hereof shall be reimbursable to the Agency as provided in the Indenture (including Agency Advances made prior to the delivery date of the Bonds);

**Section 2.05. Pledge of Tax Revenues.** The Agency hereby pledges and grants to the Trustee, on behalf of and for the benefit of the City, the Bondowners and the Bank, a security interest in and first lien on the Tax Revenues, but only to the extent the same may be required to make the Agency Advances hereunder. The pledge of any revenues of the Agency hereunder is expressly subordinated to the pledge and lien thereon of the Senior Agency Obligations.

**Section 2.06. Liability of Agency Limited to Tax Revenues.** Notwithstanding anything herein contained, the Agency shall not be required to advance any money derived from any source of income other than the Tax Revenues for the payments required hereunder. The Agency may, however, advance funds for any such purpose, from any legally available source of funds.

**Section 2.07. Additional Obligations.** Nothing herein shall limit the Agency's ability either (i) to incur additional obligations with a lien on and pledge of the Tax Revenues that are superior to that granted hereunder, to the extent provided for in the Senior Agency Obligations or (ii) to incur additional obligations with a lien on and pledge of the Tax Revenues that are junior and subordinate to that granted hereunder.

**Section 2.08. Assignment of Rights.** The City hereby assigns to the Authority, as further security for its payment obligations under the Lease, all of the City's right title and interest in and to this Amended and Restated Montebello Hotel Project Agreement, including any right to receive Agency Advances (which rights have been assigned to the Trustee), or any other payments to be made by the Agency hereunder.

### **ARTICLE III. MISCELLANEOUS**

**Section 3.01. Amendment.** The provisions of this Agreement may be amended only as provided in the Indenture, and shall require the written consent of the Bank.

**Section 3.02. Beneficiaries of Agreement.** The Authority and the Credit Entity are expressly recognized as third party beneficiaries hereto. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the Agency and the City, as parties hereto, and the Authority and the Credit Entity, as third party beneficiaries hereof, any right, remedy or claim under or by reason of this Amended and Restated Montebello Hotel Project Agreement. Any covenants, stipulations, promises or agreements in this Amended and Restated Montebello Hotel Project Agreement contained by and on behalf of the Agency or the City or any member, officer or employee thereof shall be for the sole and exclusive benefit of the Agency and the City as parties hereto, and the Authority and the Credit Entity as third party beneficiaries hereof.

**Section 3.03. No Personal Liability.** No member, officer or employee of the Agency shall be individually or personally liable for the payment of the Agency Advances; but nothing herein contained shall relieve any member, officer or employee of the Agency from the performance of any official duty provided by law.

**Section 3.04. Article and Section Headings and References.** The headings or titles of the several articles and Sections hereof, and the table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Amended and Restated Montebello Hotel Project Agreement.

**Section 3.05. Partial Invalidity.** If any one or more of the agreements or covenants or portions thereof provided in this Amended and Restated Montebello Hotel Project Agreement to be performed on the part of the Agency should be contrary to law, then such agreement or agreements, such covenant or covenants, or such portions thereof, shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof.

**Section 3.06. Execution in Several Counterparts.** This Amended and Restated Montebello Hotel Project Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or

as many of them as the Agency and the City shall preserve undestroyed, shall together constitute but one and the same instrument.

**Section 3.07. Governing Law.** This Agreement shall be controlled by and construed in accordance with the laws of the State of California.

**IN WITNESS WHEREOF,** each of the City of Montebello and the Community Redevelopment Agency of the City of Montebello has caused this Amended and Restated Montebello Hotel Project Agreement to be signed in its name by its authorized representative, all as of the day and year first above written.

CITY OF MONTEBELLO

By \_\_\_\_\_  
City Administrator

COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF MONTEBELLO

By \_\_\_\_\_  
Executive Director